

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-1789V

UNPUBLISHED

KATHEY PHELPS, as Administrator of
the ESTATE OF JAMES T. PHELPS,
Deceased,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: May 26, 2020

Special Processing Unit (SPU); Joint
Stipulation on Damages; Influenza
(Flu) Vaccine; Guillain-Barre
Syndrome (GBS)

William E. Cochran, Jr., Black McLaren Jones Ryland & Griffee, P.C., Memphis, TN , for petitioner.

Ryan Daniel Pyles, U.S. Department of Justice, Washington, DC, for respondent.

DECISION ON JOINT STIPULATION¹

On November 20, 2018, Kathey Phelps, as Administrator of the Estate of James T. Phelps, Deceased, filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that her husband Mr. Phelps suffered GBS which resulted in his death after receiving the influenza vaccination on October 4, 2017. Petition at 1, ¶¶ 3, 12; Stipulation, filed May 26, 2020, at ¶¶ 1-2, 4. Petitioner further alleges that Mr. Phelps received the vaccination in the United States and neither Mr. Phelps or Petitioner has filed a civil action or received compensation for Mr. Phelps’s injuries and death. Petition at ¶¶ 3, 13; Stipulation at ¶¶ 3-5. “Respondent denies that the flu immunization caused

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims’ website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Mr. Phelps's alleged GBS and/or other injuries. Respondent further denies that the flu immunization contributed to, or resulted in, Mr. Phelps's death." Stipulation at ¶ 6.

Nevertheless, on May 26, 2020, the parties filed the attached joint stipulation, stating that a decision should be entered awarding compensation. I find the stipulation reasonable and adopt it as my decision awarding damages, on the terms set forth therein.

Pursuant to the terms stated in the attached Stipulation, **I award** the following compensation:

A lump sum of \$300,000.00 in the form of a check payable to Petitioner, as legal representative of Estate of James T. Phelps. Stipulation at ¶ 8. This amount represents compensation for all items of damages that would be available under § 15(a). *Id.*

I approve the requested amount for Petitioner's compensation. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

KATHEY PHELPS, as Administrator of the
Estate of JAMES T. PHELPS, Deceased,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 18-1789V

Chief Special Master Brian H. Corcoran
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of the Estate of James T. Phelps ("Mr. Phelps"), Kathey Phelps ("petitioner") filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to Mr. Phelps's receipt of the influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Mr. Phelps received the flu vaccine on or about October 4, 2017.
3. The vaccine was administered within the United States.
4. Petitioner alleges that the flu vaccine caused Mr. Phelps to develop Guillain-Barré syndrome ("GBS") and related sequelae; that he experienced residual effects of this injury for more than six months; and that this injury caused and/or significantly contributed to his death on July 11, 2018.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of the Estate of James T. Phelps, as a result of Mr. Phelps's alleged injury and/or death.

6. Respondent denies that the flu immunization caused Mr. Phelps's alleged GBS and/or any other injuries. Respondent further denies that the flu immunization contributed to, or resulted in, Mr. Phelps's death.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payment:

A lump sum of **\$300,000.00** in the form of a check payable to petitioner, as legal representative of the Estate of James T. Phelps. This amount represents all compensation for damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including State compensation programs, insurance policies,

Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or entities that provide health services on a pre-paid basis.

11. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as legal representative of the Estate of James T. Phelps, under the laws of the State of Tennessee. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as legal representative of the Estate of James T. Phelps. If petitioner is not authorized by a court of competent jurisdiction to serve as legal representative of the Estate of James T. Phelps at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as legal representative(s) of the Estate of James T. Phelps, upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as legal representative of the Estate of James T. Phelps, on behalf of herself, the Estate, and Mr. Phelps's heirs, executors, administrators, successors and/or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all

known or unknown, suspected or unsuspected personal injuries to or death of Mr. Phelps resulting from, or alleged to have resulted from, the flu vaccine administered on or about October 4, 2017, as alleged by petitioner in a petition for vaccine compensation filed on or about November 20, 2018, in the United States Court of Federal Claims as petition No. 18-1789V.

14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

15. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu vaccine caused Mr. Phelps's alleged GBS and/or any other injury or his death; or that Mr. Phelps's death occurred as a result of a vaccine-related injury.

17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as legal representative(s) of the Estate of James T. Phelps.

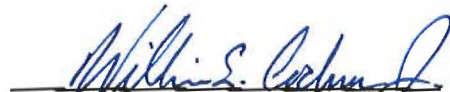
END OF STIPULATION

Respectfully submitted,


PETITIONER:


KATHEY PHELPS

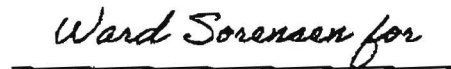
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Dated: 